

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CELESTE SPICER, AUTUMN BURGESS,  
AMY LEDIN, JOSEPH RUSSO, ESTHER  
MARTINEZ, LYSETTE ROMAN, and SERENA  
SIYING HUI, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

PIER SIXTY LLC, and JAMES KIRSCH,

Defendants.

SAND, J.

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DATE FILED: 5/24/11

**ORDER**

08 Civ. 10240 (LBS)

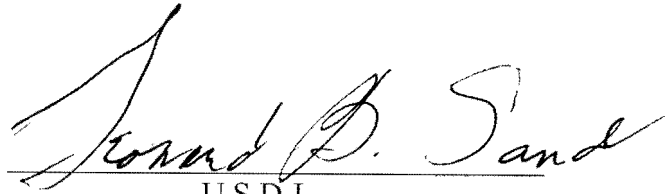
Before the Court is Defendants' motion for recusal. Defendants argue that the undersigned should be recused pursuant to 28 U.S.C. § 455(a), which provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Plaintiffs contend that this motion is untimely. Untimeliness is "a failure to seek recusal when it should first have been sought, that is, as soon as the facts on which it is premised are known to the parties." *United States v. Bayless*, 201 F.3d 116, 127 (2d Cir. 2000). The Court finds that Defendants learned of the factual basis for their motion for disqualification on February 11, 2011, informed the Court of their request for recusal on March 16, 2011, and filed a motion for recusal pursuant to a request from the Court on April 13, 2011. Defendants' motion for recusal is timely, and is therefore granted.

Accordingly, the Court hereby withdraws its order of March 17, 2011, which rescinded its earlier order of recusal, dated March 16, 2011, to enable Plaintiffs, who objected that the first recusal order did not afford them adequate time to brief the issue, to file further briefs. As a

consequence of recission of the order dated March 17, 2011, this Court is recused and the reassignment of the case to Judge Richard M. Berman is effective.

SO ORDERED.

Dated: May 24, 2011  
New York, NY



U.S.D.J.